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2004 SEP 22 P 4 09

September 20, 2004

General Counsel's Office
Federal Election Commission
999 E Street, NW
Washington, DC 20463

MUR 5517

Dear Sir or Madam

This letter is in response to a complaint filed by Shari L. McCartney against Stork's Las Olas, Inc., a bakery owned by Jim Stork in Ft. Lauderdale, FL. This response is filed on behalf of the bakery, Stork's Las Olas, Inc.

Ms. McCartney alleges that Stork's Las Olas, Inc. and Stork Investments, Inc. (hereinafter "the bakery") has illegally coordinated with the Stork for Congress Campaign (hereinafter "the campaign"). It is claimed that the bakery illegally coordinated with the campaign in airing television advertisements, allowed the campaign to use corporate facilities, logos and photographs, and made illegal corporate contributions to the campaign. It is also alleged that the campaign failed to use proper disclaimers on its website.

BACKGROUND AND DISCUSSION

Advertisements

The bakery has produced and aired advertisements in the past. The bakery ran ads prior to the opening of its first location in Wilton Manors. The ads were similar to those that aired to promote the opening of the second bakery, Stork's Las Olas, this summer.

The bakery first approached the advertising firm of Parson's Wilson in December of 2003. The plan had been to produce and air ads for the opening of Stork's Las Olas, originally slated for February or March of 2004. However, construction delays and problems obtaining a permit from the City of Ft. Lauderdale pushed the opening of the bakery back several months. The original schedule had been to air advertisements for a three week period starting February 16th. The bakery eventually opened on June 21st and advertisements ran from June 29th to July 18th.

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OFFICE OF GENERAL
COUNSEL
2004 SEP 22 P 29

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The advertising included three weeks of cable ads that aired in markets proven to attract Las Olas customers. Las Olas, an appealing destination for customers from all across Southeast Florida, is highly dependent upon business that originates in Boca Raton. It is well known among merchants that a Las Olas business cannot survive without the Boca Raton market, one of the single largest in the area. The bakery purchased cable ads in key markets, including parts of at least four Congressional Districts.

Not one advertisement referenced, alluded to, or suggested, in any way whatsoever, the campaign of Jim Stork. The advertisements talked about nothing other than the bakery. They did not touch on any political issues, nor did they talk to Jim Stork's credibility or character. The advertisements merely introduced the bakery's products, as they have done in the past.

The bakery advertisements had been planned prior to Jim Stork announcing his bid for Congress. Had the bakery's opening not been delayed by permit and construction hindrances, the advertisements would have run well before prime election season.

The campaign and the bakery engaged different advertising firms. The bakery employed Parson's Wilson and the campaign employed McWilliams Robinson. At no time was there ever contact or coordination between the advertising firm or consultants employed by the bakery and those working for the campaign.

The campaign and bakery took all necessary steps to comply with the law, engaging separate advertising firms so as to avoid even the slightest appearance of unlawful conduct. To forbid the bakery from advertising as it deemed fit would surely have impeded its success. The bakery did not target a certain district for Mr. Stork's political benefit. Rather, the bakery, consistent with other Las Olas businesses, realized the necessity of the Boca market to its economic prosperity. A fair reading of the ads demonstrates that they are not designed to influence the House race in Florida's 22nd Congressional District.

The law explicitly prohibits electioneering communication – any broadcast, cable, or satellite communication that clearly identifies a candidate for Federal office and airs within 60 days "before a general election for the office sought by the candidate, or within 30 days before a primary or preference election." 11 C.F.R. § 100.29. The bakery's television advertisements ended on July 18th and Jim Stork's primary was held on August 31st, well outside of the 30-day period prohibited by law.

Further, the bakery's advertisements do not constitute an "expenditure," defined by the Act as a purchase, payment or gift "made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i). A careful review of the ads show that they are clearly not intended to influence the election, but are for the promotion of Stork's Las Olas bakery.

It is clear that neither Congress nor the Commission has ever intended for a candidate to give up their business or limit their business over the duration of their

candidacy In responding to whether a Senate candidate in Wisconsin should be allowed to air ads for his car dealership, Senator Russ Feingold's campaign asserted "The McCain-Feingold bill was designed to stop the corrupting influence of party soft money on Federal campaigns, not to prevent legitimate business advertisements from being broadcast"¹ The facts clearly demonstrate that the bakery's ads are legitimate business advertisements, and evidence shows that these are not the intended targets of the Act

Personnel

Danielle Sylvester has worked for the bakery for approximately six years, operating in a variety of capacities Ms Sylvester has served as counter staff, shift manager, catering director, and, beginning in the fall of 2003, as a marketing consultant in the opening of Stork's Las Olas Her duties for the bakery consisted of organizing construction of the new facility, dealing with general contractors and coordinating with other consultants on the project

Ms Sylvester served as interim campaign manager from April 1, 2004 to July 31, 2004 until full-time personnel were hired Ms Sylvester was paid separately by the campaign and bakery – commensurate with the work she performed Her roles and duties were carefully delineated between employment at the bakery and employment as interim campaign manager At no time did Ms Sylvester's role at the bakery interfere with, influence, or affect her performance as interim campaign manager

Logos

A silhouette version of a stork without a coffee cup has been used by the congressional campaign, as it was used by Jim Stork's mayoral race in Wilton Manors

The bakery has used a variety of logos in the past, ranging from a cartoon stork holding a basket filled with muffins to a photo of a live stork The bakery does not have trademarks on any of these logos Currently the bakery uses a silhouette of a stork holding a coffee cup

The logo used by the campaign is not the same logo used by the bakery Further, the bakery has used many different logos over the years, none of which are trademarked by the bakery

Photos

All photos used in the campaign belong to Jim Stork, not the bakery

¹See Exhibit 1, Senator Russ Feingold Campaign, Roll Call, Tuesday, July 13, 2004, Nicole Duran reporting

Corporate Contributions

The campaign has paid for all products purchased from the bakery and receipts have been carefully maintained Bakery reimbursements to date total \$3,334 34 ²

Website Disclaimers

The campaign has used the National Geographical Political Software (NGP) to process contributions made through its website NGP is used by many candidates, fundraising firms, political action committees and other organizations

A standard contribution form is used by all NGP clients Whenever a supporter attempts to make a contribution, he/she is directed from the candidate or organization's webpage to an NGP page The contributor then must complete an online form, asking for all the necessary information that is required by Federal law, including the contributor's occupation and employer Contributors are also required "to confirm that the following statements are true and accurate "

- I am not a foreign national who lacks permanent residence in the United States
- I am not a Federal contractor
- This contribution is made from my own funds, and not those of another
- This contribution is not made from the general treasury funds of a corporation, labor organization or national bank
- This contribution is made on a personal credit card or debit card for which I have the legal obligation to pay and is not made either on a corporate or business entity card or on the card of another person
- I am at least eighteen years old "

Consistent with Federal law, the NGP contribution page includes the disclaimer "Contributions or gifts to Jim Stork for Congress are not tax deductible "

NGP, used by many political groups and individuals, including Stork for Congress, operates a standard online contribution form consisting of all necessary disclaimers

Prior to using NGP, the campaign took contributions directly through its own website The disclaimers comport with Federal law ³

² See Exhibit 2, documenting the payments to the bakery for baked goods (check dated June 30, 2004 for \$2,659 34) and the computer lease (check dated June 30, 2004 for \$225 00 and check dated September 17, 2004 for \$450 00)

³ See Exhibit 3 for a copy of the campaign's contribution page prior to using NGP

CONCLUSION

The Commission should immediately dismiss Ms McCartney's complaint. The facts presented here clearly demonstrate the bakery's innocence on each issue. (1) The campaign and bakery did not share personnel, Danielle Sylvester was employed separately by both the campaign and bakery, paid commensurate with the duties she performed. (2) The bakery did not contribute its logo to the campaign, the campaign logo differs from the bakery's logo and neither is trademarked by the bakery. (3) The photographs of Jim Stork used in the campaign are owned by Mr. Stork, not the bakery. (4) All bakery purchases made by the campaign have been carefully documented and paid for by the campaign. (5) The NGP online contribution software utilized by the campaign fulfills all Federal law requirements.

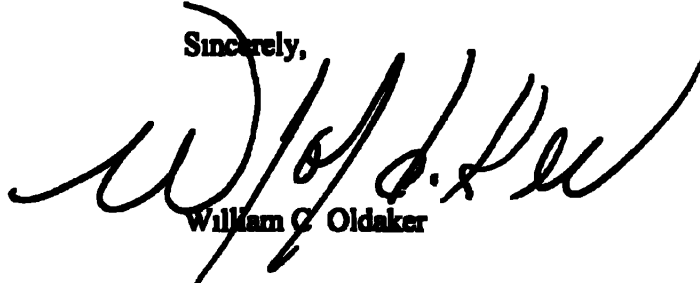
At contention is whether or not the bakery's advertisements constitute an illegal corporate contribution. Ms. McCartney would like us to believe that Mr. Stork, a candidate for Congressional office, must forestall all bakery advertisements while campaigning for public office, even advertisements that have no reference whatsoever to Mr. Stork as a candidate for public office.

It has been demonstrated that neither the Act, nor the Commission, have ever intended for a candidate to stop or limit their business interests while seeking office. If the Commission decided that a candidate could neither appear in ads for his/her business nor be mentioned in the ads, it would seriously limit the ability of certain individuals to run for Federal office. This is surely not the intention of the Act.

The bakery's ads, airing outside of the 30-day prohibition on television broadcasts prior to a candidate's primary, do not constitute electioneering communication. Nor can the ads be viewed as expenditures in the broader definition, since they were not meant to influence the election.

It is shown that the bakery's advertisements constitute a legitimate business interest, in no way designed to supplement the campaign. The bakery and the campaign took all necessary steps to comply with the law and in no way did they illegally coordinate efforts.

Sincerely,



William G. Oldaker

Enclosures

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EXHIBIT 1:

ROLL CALL ARTICLE, TUESDAY, JULY 13,
2004: "DARROW CAR AD ON TV MAY
VIOLATE BCRA RULE"

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ROLL CALL Tuesday, July 13, 2004

Wisconsin Darrow Car Ads on TV May Violate BCRA Rule

The question of whether the business legacy of GOP Senate candidate Russ Darrow could be damaged by the Republican Campaign Reform Act will probably have to be settled by the Federal Election Commission.

The FEC is currently in a bind on whether Darrow's claim of a 15-month challenge will be allowed to run advertisements in the month ending the Sept. 14 primary, a statement by the agency said. It's possible that the FEC will rule for the Russ Darrow Group, which claims the electorating Commission must allow Darrow's corporate-sponsored ads because a candidate to run in the 30 days before an election, called Bob Bennett, the FEC's chair.

Bennett said the campaign is run by Darrow's son, Russ Darrow III. Bennett said the campaign and its disbursement to the state

to avoid the prohibition.

So far, neither the Darrow campaign nor the business has sought an advisory opinion from the FEC, he said.

The story of the situation was not lost on Darrow's campaign as he, and his Republican rivals, have all eluded the men they want to replace, Sen. Russ Feingold (D), for making campaign-finance reform a chief goal.

"The fact that a person can be in business for so many years, and now a practice that has gone on for many years, his advertising, can come under question is the height of absurdity, and it speaks to the lack of important issues that Russ Feingold has been fighting for," the Milwaukee Journal-Sentinel quoted Darrow campaign manager Eric Schmitt as saying last week.

Feingold co-authored BCRA, which became law in late 2002, with Sen. John McCain (R-Ariz.).

Feingold's campaign responded "The McCain-Feingold bill was designed to stop the corrupting influence of party soft money on federal campaigns, not to prevent legitimate business advertisements from being broadcast," the paper reported.

While the Darrow question swirled, state Sen. Bob Welch, who is also seeking the GOP nod, took the opportunity to blame Darrow and a third candidate for putting their own money into the race.

"Millionaire car dealer Russ Darrow and millionaire pipeline executive Tim Michaels have each spent more of their personal fortunes on their campaigns for U.S. Senate than they said they would in official filings with the FEC," Welch's campaign said in a statement.

Michals had told the FEC he would not spend more than \$307,200 of his own money, enough to trigger BCRA's "millionaire amendment" — a threshold that if exceeded by one candidate allows his rivals to raise more money from individuals and political action committees.

Darrow had pledged not to spend more than \$307,200, yet Michaels had given his campaign almost \$900,000 and Darrow has contributed \$1.4 million, Welch claims.

Even though Welch does not have the ability to self-finance, the pensions that Darrow and Michaels' millions are placing on him was evident when Welch's campaign announced Monday that it too would finally take to the airwaves.

The ad, which plays up Welch's experience and record, will begin airing later this month.

Darrow and Michaels are both already running television commercials.

Feingold began running two new ads Monday featuring the Senator's efforts to protect Wisconsin jobs.

— Nicole Suran

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EXHIBIT 2:

**REIMBURSEMENTS TO THE BAKERY FOR
BAKED GOODS AND COMPUTER USAGE**

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Sep 20 04 02:14p James Stork

P.3

JIM STORK FOR CONGRESS
CAMPAIGN ACCOUNT
P O BOX 38474
FORT LAUDERDALE FL 33339

WACHOVIA
WACHOVIA BANK, N.A.
ACH R/T 087008432
63-0437070

1501

September 17, 2004

Pay TO THE ORDER OF Stork's Bakery \$ 450.00
Four hundred fifty dollars and no cents
DOLLAR

Jim Stork

MEMO

Computer lease

JIM STORK FOR CONGRESS/CAMPAIGN ACCOUNT

1501

Stork's Bakery
September 17, 2004
\$450.00
Computer lease

JIM STORK FOR CONGRESS/CAMPAIGN ACCOUNT

1501

Stork's Bakery
March 25, 1901
\$450.00
Computer lease

28044221345

JIM STORK FOR CONGRESS
CAMPAIGN ACCOUNT
PAID BY
FORT LAUDERDALE, FL 33309

1257

DATE 6/30/04 DEPOSIT
CASH

FOR Stork's Bakery \$ 225.00

Two Hundred Twenty five and 00/100 DOLLARS

WACHOVIA
BANK, N.A.
MEMBER FDIC

FOR Comalakease [Signature]

28044221346

JIM STORK FOR CONGRESS CAMPAIGN ACCOUNT DATE PAID FOR LABORAL, P. 1000		1258
Stork's Bakery		DATE 6/30/01
Two Thousand Six Hundred Fifty Nine		2659.31
Baked Goods		

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EXHIBIT 3:

**COPY OF CAMPAIGN WEBPAGE PRIOR TO
USING NGP**

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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
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By clicking on one of the contribute buttons above I affirm that I have read and meet the following Federal guidelines for political contributions

* Please read the following Federal guidelines for political contributions

Federal law requires political committees to use their best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year

Federal law prohibits contributions to a political committee from

- The general treasury funds of corporations, labor organizations or national banks (including corporate credit cards),
- Any person contributing another person's funds,
- Foreign nationals who lack permanent resident status
- Government contractors

A political committee may accept contributions from minor children (i.e., persons under 18 years of age) if the minor makes the decision to contribute knowingly and voluntarily, and the child contributes his or her own funds and the contribution is not controlled by another individual or made from the proceeds of a gift given to provide funds to be contributed. Federal law limits contributions to \$4,000 per person per election.

Contributions are not deductible for Federal income tax purposes

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Jim Stork for Congress

Please type in all fields then hit the print button on the bottom of the page
This form must be completed in full

Name
Address
City
State Zip
Phone
Occupation *
Employer *
E-mail
Visa ☐ MC ☐
Amount \$
Number Expiration V-
code

The Vcode is on the back of your credit card, the last three numbers in your signature line

Please send this completed form and your check, payable to Jim Stork for Congress, to

Jim Stork for Congress
P.O. Box 39474
Fort Lauderdale, FL 33339

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